

REMARKS

This responds to the Office Action dated October 15, 2008.

Claims 29, 49 and 54 are amended, claims 1-28 are canceled, and claim 61 is added.

Thus, claims 29-61 are currently pending in this application. Claims 1-28 were previously withdrawn from consideration, and are now canceled.

§102 Rejection of the Claims

Claims 29-35 were rejected under 35 U.S.C. § 102(a/e) for anticipation by Stahmann et al. (U.S. Publication 2003/0097155, hereinafter “Stahmann”). Applicant respectfully traverses the rejection for at least the following reasons.

Applicant has amended the independent claims to further clarify the recited subject matter. Support for the amendment is provided at least from page 22, line 25 through page 26, line 14 of the specification. Applicant respectfully submits that the cited portion of Stahmann does not show the presentation of data trends including presentation of measurements and time associated with the measurements, wherein the measurements reflect the success level for the delivery of the prescribed CRT, as recited.

With respect to claim 29, the cited portion of the cited reference does not show, among other things, an implantable cardiac rhythm management (CRM) device including a controller adapted to control processing of the sensed signals and recording of data to the memory, the recorded data including data to measure a success level for delivery of the prescribed CRT, wherein the delivery of the prescribed CRT is successful when the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, and a communication circuit adapted to transmit the recorded data to an external device for presentation of data trends useful to assess an efficacy of the prescribed CRT, wherein the presentation of data trends includes presentation of measurements and time associated with the measurements, wherein the measurements reflect the success level for the delivery of the prescribed CRT, as recited in the claim. Claims 30-35 depend, either directly or indirectly, on claim 29 and are believed to be in condition for allowance with claim 29.

Reconsideration and allowance of claims 29-35 are respectfully requested.

§102/§103 Rejection of the Claims*Claims 36-48*

Claims 36-48 were rejected under 35 U.S.C. § 102(a) for anticipation by Stahmann or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Stahmann. Applicant respectfully traverses the rejection for at least the following reasons.

As stated above with respect to independent claim 29, Applicant respectfully asserts that the cited portion of Stahmann does not anticipate the subject matter recited in claim 29, as amended. Claims 36-48 depend either directly or indirectly on claim 29, and are believed to be allowable for the reasons provided with respect to claim 29.

The Office Action states, at paragraph 8, that “the recitation that the controller is ‘adapted to’ perform a function is not a positive limitation but only requires the ability to so perform.” Applicant respectfully submits that a functional limitation has to be considered like any other limitation. A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. MPEP § 2173.05(g). Limitations such as “members adapted to be positioned” serve to precisely define present structural attributes of interrelated component parts of the claimed assembly. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976). Further, with respect to devices that are programmed, Applicant submits that devices with different programs have structural differences. As such, it follows that to anticipate subject matter, a reference must teach the each and every element as set forth in the claim, including any functional language. The reference must expressly or inherently show the recited functionality. Further, inherency requires that the inherent disclosure must be necessarily present and a person of ordinary skill in the art would recognize its presence. *Crown Operations Intl. v. Solutia, Inc.*, 289 F.3d 1367, 1377 (Fed. Cir. 2002). Applicant respectfully submits that Stahmann does not expressly or inherently show the recited functionality.

Additional reasons for allowance are found in the dependent claims. With respect to claim 36, the Office has not shown nor even asserted the controller is adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples

per unit time, as recited in the claim. With respect to claim 37, the Office has not shown nor even asserted the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time until a predetermined change occurs in delivered CRT, and then trend M samples per unit time, as recited in the claim. With respect to claim 38, the Office has not shown nor even asserted the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time until a predetermined threshold is reached related to delivered CRT, and then trend M samples per unit time, and then trend M samples per unit time, as recited in the claim. With respect to claim 39, the Office has not shown nor even asserted the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time until a predetermined event occurs, and then trend M samples per unit time, as recited in the claim. With respect to claim 40, the Office has not shown nor even asserted the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend M samples per unit time after initiation of a trigger selected from a group consisting of: a predetermined change in delivered CRT, a predetermined threshold related to delivered CRT, and a predetermined event, as recited in the claim.

Reconsideration and allowance of claims 36-48 are respectfully requested.

Claims 49-60

Claims 49-60 were rejected under 35 U.S.C. § 102(a) for anticipation by Stahmann or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Stahmann in view of Kramer et al. (U.S. Publication 2002/0133198 hereinafter “Kramer”). Applicant respectfully traverses the rejection for at least the following reasons.

As stated above with respect to independent claim 29, Applicant respectfully asserts that the cited portion of Stahmann does not anticipate the subject matter recited in claim 29, as

amended. Applicant respectfully submits that the deficiencies in the rejection with respect to Stahmann discussed above are not overcome by combination with the cited portions of Kramer.

With respect to claim 49, the Office has not shown in the cited portions of the cited references, among other things, a system with a CRM device and a programmer, the CRM device including a controller adapted to communicate with the set of interface channels and the memory, the controller adapted process sensed cardiac signals and to record data to the memory of the CRM device, the recorded data including data to measure a success level for delivery of the prescribed CRT, wherein the delivery of the prescribed CRT is successful when the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, and the programmer including a monitor adapted to communicate with the controller, the monitor being adapted to display information corresponding to the trended data including presentation of measurements and time associated with the measurements, where the measurements reflect the success level for the delivery of the prescribed CRT, as recited in the claim. Claims 50-53 depend directly on claim 49 and are believed to be in condition for allowance with claim 49.

With respect to claim 54, the Office has not shown in the cited portions of the cited references, among other things, a system with a CRM device and a programmer, the CRM device including a means for recording data corresponding to a status of the prescribed CRT, the recorded data including data to measure a success level for delivery of the prescribed CRT, wherein the delivery of the prescribed CRT is successful when the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, and the programmer including a means for displaying information corresponding to the trended data including presentation of measurements and time associated with the measurements, where the measurements reflect the success level for the delivery of the prescribed CRT, as recited in the claim. Claims 55-60 depend directly on claim 54 and are believed to be in condition for allowance with claim 54.

Reconsideration and allowance of claims 49-60 are respectfully requested.

AMENDMENT AND RESPONSE UNDER 37 C.F.R § 1.111

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (715) 824-5144 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date January 15, 2009

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 15, 2009.

Kate Gannon

Name

Signature

